

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

RENSSELAER POLYTECHNIC INSTITUTE

Employer

and

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 200 UNITED, AFL-CIO, CLC

Petitioner

Case 4–RC–20580  
(formerly 3–RC–11267)

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. *Positions of the Parties*

The Employer is an institution of higher education based at a campus in Troy, New York. The Petitioner seeks to represent a unit of all nonsupervisory employees in the Employer's Environmental and Site Services department (ESS). The Employer takes the position that the only appropriate unit is a wall-to-wall University-wide service and maintenance unit. There are about 97 employees in the petitioned-for unit and about 213 employees in the unit proposed by the Employer.<sup>1</sup>

### *The Employer's Service and Maintenance Operations*

The ESS department is part of the Employer's Administration Division, which also includes several other departments: Physical Plant; Public Safety and Parking; Auxiliary Services; Campus Planning and Facilities Designs; Procurement and Administrative Services; and the Capital Projects and Special Projects Group. The heads of these departments meet with the Vice-President of Administration, Claude Rounds, on a weekly basis to discuss policy issues.

ESS is responsible for cleaning campus facilities, maintaining the campus grounds, and providing mail service and campus deliveries, among other services. ESS and the Physical Plant department were established in the summer of 2001. Previously, their functions were performed by the Auxiliary Services department.

The ESS department includes several job classifications.<sup>2</sup> Of the 97 employees, 72 are Environmental Specialists who clean all of the Employer's academic and non-academic buildings. Manager Brian Krall is in charge of all of the Environmental Specialists, and Tom Sawyer supervises the Environmental Specialists who work at residential facilities. Ten Groundskeepers and two Gardeners maintain the outside areas of the campus with assistance from three Grounds and Transportation Specialists. Their supervisors are Scott Litwin and Jack Holstein. The Movers, who are supervised by Manager Joe Flanigan, transport heavy items around the campus. Six Mail Service Specialists and two Mail Service Drivers work in the mailroom and deliver mail on campus; the Mail Services Supervisor is Dave Heyward. Additionally, two Auto Mechanics maintain the Employer's various motor vehicles. ESS employees work varying shifts depending on their classification, as do employees in other Administration departments. Scott Richards is the Director of ESS, and he reports to Vice-President of Administration Rounds.

Most of the other classifications sought by the Employer to be included in the unit are in the Physical Plant Department. The employees in this department generally are higher skilled

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<sup>1</sup> On August 23, 2000, an election was held in Case 3-RC-10011 among all of the Employer's service and maintenance employees at the Troy campus and at the nearby Rensselaer Technology Park, pursuant to a stipulated election agreement. The petitioner in that case, which was a predecessor of the Petitioner, lost the election. The Employer contends that the unit in this case should be the same unit as in Case 3-RC-10011.

The parties stipulated that the following individuals should be excluded from the unit because they are supervisors: Brian Keil, Tom Sawyer, Scott Litwin, Jack Holstein, Joe Flanigan, Dave Heyward, Dave Zimmerman, Patricia Bullock and Tammy Bouchard. The parties further stipulated that leadpersons in the ESS department are not supervisors within the meaning of Section 2(11) of the Act.

<sup>2</sup> Within these general classifications, employees may attain "senior" status or become leadpersons.

than the employees in ESS. The Physical Plant department includes nine Repairers,<sup>3</sup> eight Maintenance Mechanics,<sup>4</sup> seven HVAC Mechanics, seven Electricians and an Electrician trainee, four Operating Mechanics, five Painters, three Carpenters, one Mason,<sup>5</sup> three Safety System Technicians, a Coordinator of Campus Keying, a Pest Control Applicator, and an Electronic Field Service Technician. Mark Frost is the Director of the Physical Plant department. Frost and Richards are in regular contact to coordinate matters between their departments.

The Employer also seeks to include several classifications in other divisions and departments in the University. These classifications include: 11 Specialist/Drivers in the Public Safety Department; six Stockkeepers<sup>6</sup> in the Procurement and Administrative Services Department; six Athletic Facilities Specialists in the Athletics Department; four Utility Specialists in the Auxiliary Services Department; four Machinists and 19 Information Technology (IT) Specialists in the IT Operations Department; and three Electronic Technicians, an Information and Technical Specialist, and a Manufacturing Technician at the School of Engineering. The Employer additionally seeks to include Repairers who work at the Rensselaer Technology Park which is located about five miles south of the Troy campus in North Greenbush, New York.

The Senior Vice-President of Human Resources, Curtis Powell, is responsible for all of the Employer's personnel and labor relations policies, including compensation, health and safety, and employee benefits. The Employer has a single policy and procedures manual that applies to all employees. All of the employees in the Administration Division are paid an hourly rate and receive the same sick leave, vacation pay, health and dental insurance, life insurance and other benefits. Employees in all departments are subject to the same policies concerning wage increases, but the increases vary based on supervisory recommendations.<sup>7</sup> The Employer gives all non-supervisory employees an allowance to purchase clothing bearing the Employer's insignia. The Employer also administers a single disciplinary system for its employees. Supervisors and department heads may themselves impose relatively minor discipline such as counseling and warnings, but Human Resources is involved in suspensions and terminations. The Human Resources department also assists all of the other departments at the University in recruiting and hiring employees, although final selections are made at the departmental level.

All University employees attend the same new employee orientation program and are invited to an annual Christmas party and summer picnic, as well as a luncheon on the first Monday of each month. ESS employees attend a monthly "lottery" meeting at which matters of

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<sup>3</sup> The Employer also employs several Repairers in departments other than the Physical Plant department, including the Student Union and Technology Park departments.

<sup>4</sup> The category of Maintenance Mechanics includes Plumbers, Welders, Roofers, and Sheet Metal Employees, among other jobs.

<sup>5</sup> Painters, Carpenters, and Masons frequently work together and are collectively known as "PCM" employees.

<sup>6</sup> Stockkeepers manage stock purchased through the University bookstore.

<sup>7</sup> Specifically, the University's policy provides that employees may receive merit raises in a range from zero to seven percent. The employee's immediate supervisor makes a recommendation to the director of the department as to the amount of the increase, and this recommendation is then sent to Powell for final approval. Powell has approved these recommendations on all but one or two occasions.

common interest are discussed and employees are rewarded for good attendance, while employees in the Physical Plant department attend separate lottery meetings. Employees in the ESS department take courses on handling hazardous materials and other safety issues with employees in the Physical Plant department.

Environmental Specialists earn \$7.50 an hour to start. Their top rate is \$13.98, and their median pay is \$9.21 per hour. Groundskeepers also start at \$7.50. Auto Mechanics start at \$13 an hour, and the other employees in the department earn between \$7.50 and \$15.80.<sup>8</sup>

The skilled maintenance employees in the Physical Plant Department generally receive a higher rate of pay than ESS employees. Two Safety System Technicians receive \$20 an hour, and the other one earns \$16 an hour. The Coordinator of Campus Keying is paid a salary that translates to between \$16 and \$18 an hour. The other Physical Plant department employee hourly wages are: Electronic Field Service Technician - \$21; Mason - \$17; Operating Mechanic - \$15 to \$20; HVAC Mechanic - \$14 to \$21; Electrician - \$14 to \$21; Carpenter - \$14 to \$19; Painter - \$13 to \$16; Repairer - \$11 to \$16; Pest Control Applicator - \$13; and Electrician trainee - \$12.

Most employees in the ESS department, including the Environmental Specialists, are hired directly from high school with no prior experience, and although the Employer prefers to hire employees with high school diplomas, some of the ESS employees have not attained them. Groundskeepers and Mail Service Specialists are required to have six months of experience in their fields, Grounds and Transportation Specialists are required to have three years' experience, and Auto Mechanics are required to have four years' experience. Some of the positions have physical requirements such as the ability to lift up to 100 pounds for Movers, and most ESS employees are required to have a valid drivers license. In hiring employees for skilled positions in the Physical Plant department, the Employer looks for three to five years of experience, depending on the classification. Some of the classifications, including Pest Control Applicator and Safety Systems Technician, are also required to hold licenses for their specialties.

The record contains numerous examples of ESS employees working on tasks with employees from other departments. Of the ESS classifications, Groundskeepers are most likely to work regularly with Physical Plant employees. On an almost daily basis, the Groundskeepers assist Physical Plant employees in constructing and maintaining retaining walls, sidewalks, and other masonry. They also work with Electricians in constructing trenches for utilities and with HVAC employees in installing and maintaining air conditioning units. Groundskeepers and Athletic Facilities Specialists all collect trash and otherwise maintain and clean the athletic fields. Groundskeepers and Gardeners are required to work with employees from the Physical Plant department in maintaining and repairing the Employer's irrigation system for landscaping.

ESS employees also work with Physical Plant employees in handling various emergencies. Environmental Specialists, Electricians, Carpenters, and Masons worked together to resolve a flooding problem caused by a defect in the sprinkler system at the University's

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<sup>8</sup> Other than Auto Mechanics, none of the ESS employees earn more than \$20 per hour.

Engineering Center.<sup>9</sup> ESS and Physical Plant employees also collaborated during 2002 to clean up after a bathroom overflow and a fire. On another occasion, the roofs of two buildings were blown off by a severe storm, and 50 trees were damaged. Environmental Specialists removed the water and dealt with the water damage to the building; Groundskeepers attempted to repair the damage to the trees and landscape; HVAC employees, Electricians, Maintenance Mechanics, Painters, Carpenters, and Masons helped repair the structural damage; and IT Technicians restored the IT system. When there is a water main break, the Groundskeepers are required to excavate the area before employees from the Physical Plant department perform the repairs.

It is not uncommon for ESS employees and employees from other departments to work on the same building renovation projects. Thus, when the University's Special Projects group was relocated, Environmental Specialists and Repairers moved furniture so that construction could begin. Thereafter, Movers, Groundskeepers, and Grounds and Transportation Specialists from ESS worked with Electricians, Repairers, Pest Control employees, Safety Systems Technicians, and the Coordinator of Campus Keying from the Physical Plant department. IT Technicians and Electronic Field Service Technicians also participated in the project. In August 2002, after employees from the Auxiliary Services and Public Safety departments constructed a system to provide access to a building for a disabled student, ESS employees handled the clean-up operation. In the last 10 months, there were at least 60 multi-classification projects performed at the University. On some of these projects, the ESS and Physical Plant employees began or completed their work on different dates, and it is not clear to what extent they worked on the same projects simultaneously.

The Employer has a "building assessment program," pursuant to which the directors of the different departments, including Richards and Frost, jointly tour various facilities about once a week to determine their condition and issue work orders to whatever departments are needed to correct the problems. For example, if they notice a broken window, they will send a request to ESS for an Environmental Specialist to clean up the glass and a request to Physical Plant for a Repairer or Carpenter to replace the window.

The record contains evidence of additional work-related contact between ESS employees and employees in other departments. Environmental Specialists are responsible for notifying the Physical Plant department of problems requiring repair, and they report infestation problems to the Pest Control Applicators and clean up after they treat the area. When an IT Technician drills through a wall to install equipment, an Environmental Specialist will clean the area. About 10 to 20 times per month students move into and out of various housing units, and employees from the ESS and Physical Plant departments work to prepare the units for occupancy. Environmental Specialists and HVAC Mechanics often collaborate on resolving ventilation problems that cause mold to grow. When the ventilation system in the greenhouse needs repair and maintenance, the HVAC employees work with the Gardeners. ESS coordinates snow and ice removal for the University and may utilize employees from other departments as needed. ESS and Physical Plant employees also worked in 2002 on small projects such as making repairs to a flagpole and an exhaust fan, and installing a canopy. Environmental Specialists and Repairers also regularly

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<sup>9</sup> Flooding problems occur fairly frequently at the University.

work together replacing light bulbs throughout the campus when the bulbs are too high for the Environmental Specialists to change by themselves.

A large number of employees from every division are involved in helping to prepare for the University's annual Commencement ceremony and celebration.<sup>10</sup> There are as many as 25 other special events annually, including Trustee Meetings, summer programs, and student orientations, which involve employees from a number of departments and divisions.

Not all ESS employees have a great deal of contact with other service and maintenance employees, however. Thus, Environmental Specialist Sheila Lozo testified that in her three years of employment she has had no contact at work with employees outside of ESS. If she is unable to repair something in the area in which she works, she contacts the Physical Plant department and she is no longer involved. Environmental Specialist David Hempstead testified that in his four years of employment, other than at Commencement and while shoveling snow, he has worked with employees from the Physical Plant department on only about two occasions, changing light bulbs. Former Environmental Specialist Paul Barlow testified that in his four years of employment at the University, he had no regular contact with employees outside of ESS. Groundskeeper Phil O'Claire, who has been employed on an irregular basis for three years, testified that he had no regular interaction with employees outside ESS, although he recalled one or two occasions on which he worked with Repairers. Rich DeCaprio, a 17-year employee who currently works as a Repairer/Mason in the Auxiliary and Support Services department, testified that he deals exclusively with employees in the Physical Plant department and has no regular contact with ESS employees. Repairer Stanley Van Fonda, however, testified that he frequently works with ESS employees and has worked with Hempstead and Lozo.

There have been very few transfers of employees from the ESS department to other departments at the University. ESS employees have only moved to other departments on about one or two occasions in the last two years, and even on those occasions they were required to fill out applications and were hired as new employees.

One Repairer and one Repairer trainee work at the Technology Park location, in addition to three or four clerical and professional employees. The Repairers are part of the Employer's Office of Economic and Technical Development, and they perform general maintenance, landscaping, and groundskeeping work at the one small building owned by the Employer. No ESS employees work there.

### *The Applicable Law*

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., *Bartlett Collins Co.*, 334 NLRB No. 76

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<sup>10</sup> The 2002 Commencement required a great deal of extra work because it was moved indoors due to inclement weather. Many of the employees performed the work on a voluntary basis.

(2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R&D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), enfd. 411 F.2d 356 (7<sup>th</sup> Cir. 1969). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), enfd. on other grounds 190 F.2d 576 (2d Cir. 1951).

In determining the appropriate scope of a unit at a college or university, the Board examines prior bargaining history, centralization of management, employee interchange, interdependence of facilities, differences or similarities of skills and functions, and geographic locations. *University of Hartford*, 295 NLRB 797, 798 (1989); *Cornell University*, 183 NLRB 329, 336 (1970).

### *Conclusion*

I find that the unit sought by the Petitioner is appropriate for collective bargaining. The Employer has established a separate department in its Administration Division for ESS employees, and the petition is consistent with the Employer's administrative structure. There have been virtually no transfers of employees from ESS into positions outside of the department. On a day-to-day basis, the ESS employees are separately supervised by their direct supervisors, and those supervisors in turn report to Scott Richards, the director of the department. The vast majority of the ESS employees are Environmental Specialists, for whom no previous experience or training is required. In general, the ESS employees perform less specialized tasks than Physical Plant employees, many of whom have significantly more experience and training. Consequently, the Physical Plant employees on the average receive higher compensation than the ESS employees.<sup>11</sup>

A major portion of the record was devoted to providing evidence concerning the interaction between ESS and Physical Plant employees, and there is no question that individuals from both groups frequently work on the same projects. However, many of these work-related contacts occur in atypical situations such as special events or emergencies, and in other cases ESS employees simply clean up after the Physical Plant employees perform the construction or repairs. Moreover, the record shows that some of the ESS employees have little or no interaction with employees outside of the department. On balance, considering that the ESS employees are in a distinct department, are separately supervised at the lower levels, are generally lower skilled and lower paid than Physical Plant department employees, and that there have been virtually no transfers of ESS employees outside the department, the evidence of contact and interchange is insufficient to demonstrate that the petitioned-for unit is inappropriate.<sup>12</sup>

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<sup>11</sup> Although the parties stipulated in the year 2000 to an election in the unit now proposed by the Employer, that unit includes employees from a number of different departments who are separately supervised. In addition, some of the employees in that unit work at another location.

<sup>12</sup> Employees working at the Technology Park also are excluded for the additional reason that they work at a separate location.

In reaching this conclusion, I found the Board's decision in *University of Hartford*, 295 NLRB 797 (1989) to be particularly instructive. In that case, the petitioner sought a unit of approximately 83 university custodial and groundskeeping employees, in classifications similar to those in the instant case,<sup>13</sup> but the employer contended that the only appropriate unit should include about 225 additional clerical, technical, skilled trades, and power plant employees. The Board found the petitioned-for unit appropriate although it was not a university-wide maintenance unit.<sup>14</sup> The Board emphasized that the petitioned-for unit consisted entirely of unskilled maintenance employees and found that many of the excluded classifications did not share a community of interest with the petitioned-for employees because they were separately supervised, performed specialized tasks, required prior training, experience, and licensing, and there was virtually no transfer or interchange.<sup>15</sup> Those factors are also present in the instant case. Accordingly, I shall direct an election in the petitioned-for unit.

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time service and maintenance employees employed in the Environmental and Site Services Department at the Employer's campus in Troy, New York, including Environmental Specialists, Gardeners, Groundskeepers, Grounds and Transportation Specialists, Mail Service Specialists, Mail Service Drivers, and Auto Mechanics, including leadpersons employed in these classifications, but excluding all other employees, per diem employees, clerical employees, professional employees, technical employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,<sup>16</sup> subject to the Board's Rules and Regulations. Eligible to vote are those in the

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<sup>13</sup> Specifically, the unit included 67 custodians, 11 groundskeepers, a household aide, a stock distribution-equipment maintenance employee, a mail delivery person, a mail clerk/courier, and a vehicle maintenance person.

<sup>14</sup> Similar to the instant case, the employer's Human Resources department maintained a uniform set of personnel policies and recruited and screened job applicants.

<sup>15</sup> The Board found in that case that there was only minimal work-related contact between the skilled and unskilled employees, although in his dissenting opinion former Member Johansen stated that it was not unusual for the skilled maintenance employees to work side by side with employees in the petitioned-for unit. Those contacts included custodians cleaning up after skilled maintenance employees made repairs, and interaction between groundskeepers and skilled trades employees when system repairs were made outside buildings.

Arguably, the instant case is even more favorable to the Petitioner because in *University of Hartford*, the unit included employees from several different departments, while all employees in the petitioned-for unit in the instant case are in ESS.

<sup>16</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full



unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 200 UNITED, AFL-CIO, CLC**

**LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **December 24, 2002**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

**RIGHT TO REQUEST REVIEW**

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working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **December 31, 2002**.

Signed: December 17, 2002

at Philadelphia, PA

/s/\_\_\_\_\_  
DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

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